IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.25426 of 2005
CHANDRA BHUSHAN MISHRA
Versus
STATE OF BIHAR
WITH
Cr.Misc. No.33574 of 2005
ABDUL SATTAR
Versus
STATE OF BIHAR
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42. 26.02.2009 An application for anticipatory bail on allegations of illegal mining and consequent offences under Sections 379, 409 of the Penal Code read with Sections 33, 41 & 64 of the Indian Forest Act and Sections 4 & 40 of the Bihar Mines and Minerals concession Rules, registered as Narkatiaganj (Sahodra) P.S. Case No. 27 of 2005, with regard to the area of Valmiki Wild Life sanctuary, in the district of West Champaran, has revealed far more serious issues necessitating the present order.

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The prayer for anticipatory bail of the alleged accused has already been rejected.

Assailing the grant of permission under the Forest Act by the Central Government in the Valmiki Wild Life Sanctuary area, the State of Bihar filed I.A. No. 836 of 2002 (State of Bihar v. U.O.I. & ors.) in Writ Petition (Civil) No. 202 of 1995 (T.M. Godavarman Thirumulpad v. U.O.I. & ors.). The Supreme Court on 1.9.2003 referred the matter to the Central Empowered Committee. The Central Empowered Committee on 23.10.2003 made the following recommendation :

(i) The MOEF's order dated 20.8.2002 allowing mining

leases inside Valmiki Wild Life Sanctuary may be set aside.

(ii) The State of Bihar may be directed to ensure immediate closure of all mining activities inside National Parks and wild life sanctuaries including within the safety zone around the boundaries of the National Parks and sanctuaries.

(iii) The Ministry of Environment and Forest may be directed to ensure that no mining leases inside any National Parks or wild life sanctuary is approved under the Forest Conservation Act without obtaining specific permission from this Hon'ble Court in view of the order dated 14.01.2000 passed in I.A. No. 548.

These recommendation were made after hearing and accepting the contentions of the State of Bihar.

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The Supreme Court on 4.2.2005 accepted the recommendations of the Central Empowered Committee which the State of Bihar supported before the Supreme Court. The State of Bihar was directed to file compliance report in the Supreme Court within a period of eight weeks. On 22.9.2005 the State of Bihar acting through one Ranbir Singh, Assistant Conservator of Forest, Nalanda Forest Division, Biharsharif, Bihar filed a compliance affidavit in I.A. No. 836 of 2002 and analogous Interlocutory applications. Paragraph 4 of the affidavit reads as follows :

"4. That the proposal of declaring an area around sanctuary and National Park as safety zone is under active consideration of the State Government. After considering various aspects related to this matter a decision will be soon taken by the State

Government."

On 6.5.2005 Narkatiaganj (Sahodra) P.S. Case No. 27 of 2005 came to be filed against one Chandra Bhushan Mishra son of Late Babu Man Mishra. The location is identified as village Khairatia, khata no. 11, khesra no. 21, area 5.6 acres just adjacent to the sanctuary. The allegation is that while mining in the leased area contiguous to the sanctuary, he intruded in the sanctuary.

The present issue is confined to the grant of mining lease in the safety zone area and continuance thereof notwithstanding the recommendation of the C.E.C. on objection by the State of Bihar, accepted by the Supreme Court, and the compliance affidavit by the State of Bihar, which does not appear to have demarcated any safety zone and has granted and permitted mining in the safety zone notwithstanding the aforesaid orders and undertaking by it.

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This Court required the District Magistrate, West Champaran to file affidavit affirmed by him on the issue of mining lease granted/permitted in the safety zone area just adjacent to the sanctuary. The District Magistrate, one Mr. Rahul Singh son of late Sachchidanand Singh filed his affidavit. The affidavit reveals that lease was granted to Sri Chandra Bhushan Mishra on 12.6.2004 with effect from 28.2.2004 till 27.2.2009. This was for the safety zone area, when the Central Empowered Committee on 23.10.2003 after hearing the State of Bihar had prohibited any mining in the safety zone area and which has been accepted by the Supreme Court and the State of Bihar. The Deputy Director-cum-Chief Conservator of Forest, Bihar and the

Regional Director, Valmiki Tiger Project, West Champaran wrote to the District Magistrate aforesaid vide letter no. 1864 dated 17.9.2004 and letter no. 548 dated 26.5.2005 objecting to such lease adjacent to the sanctuary in the safety zone causing damage to the forest and wild life. The District Magistrate nonchalantly ignored these letters and permitted mining but finally cancelled the leases only as late as 5.10.2005 when this Court in the present proceedings started to question the action of the District Magistrate in view of the recommendations of the Central Empowered Committee, the order of the Supreme Court and the affidavit of compliance by the State of Bihar.

The lease prima facie appears to have been granted by the District Magistrate, upon lands which constituted/partly constituted the safety zone area. While the State of Bihar engaged itself in protection of the environment and obtained orders from the Courts, its officials, proceeded to act just to the contrary and in complete defiance/violation of such orders.

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The Forest Department, Government of Bihar filed affidavit before this Court affirmed by one Raj Kumar Singh son of late Major H.P. Singh. Paragraph 6 of which states as follows :

"6. That Hon'ble Supreme Court referred the above matter of I.A. 836 to Central Empowered Committee. It was heard by the Central Empowered Committee and CEC gave its recommendation. The CEC has referred to a "safety zone" in its recommendations but has not specified any limit of distance for which

safety zone is to be declared. The CEC has not referred any provision of law under which the safety zone can be declared. It is also important to note that there is no provision under Indian Forest Act or the Wild Life Act, regarding the said safety zone. The term safety zone has been used in Forest Conservation Act, 1980 but it refers to a green belt around a mining lease area which is 7.5 meter wide. We are not aware of any other State having declared a safety zone. Nevertheless this issue is under examination by the State Government."

The language of the affidavit, contrary to the undertaking by the State of Bihar before the Supreme Court is startling and virtually challenges the recommendation of the CEC.

In the circumstances, this Court by an order dated 6.3.2006 requested the Ministry of Environment & Forests, Government of India, New Delhi to send a team of responsible officials and submit its report to this Court. The report dated 7.7.2006 came to be submitted. The report was not disputed or denied by the State of Bihar in the Department of Forests or Mines before this Court. In paragraph 5.4 of the report, relevant for the present purpose, it is stated as follows :

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"5.4 The team has also observed that even raiyat land where mining lease has been permitted is surrounded closely at least on the three sides by the protected areas/sanctuaries. Exposing the protected area to all sorts of threats including poaching and illicit felling etc. a perusal of maps enclosed (Annexure III) gives an indication of the interlocking situation, which is not congenial for the

conservation of wildlife. The three maps enclosed are of Division I, Division II and whole of Valmiki Project Tiger area. A perusal of all the three maps shows that the mining leases (both closed and ongoing) are more or less in the protected area. Those, which are said to be outside the boundary are also close to the habitat and surrounded by park/sanctuary boundary on all the sites which is very dangerous. The inspection team is gravely concerned about this situation."

By order dated 15.1.1998 in T.N. Godavarman Thirumulpad v. Union of India (1998) 2 SCC 59, the Supreme Court gave directions for initiation of disciplinary/criminal proceedings against those found responsible for violation of orders.

Learned Advocate General, on the facts of the case, and the subsequent report of the CEC dated 7.7.2006 submitted that the matter be referred to the CEC for appropriate recommendation/action against those concerned in view of the orders of the Supreme Court.

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Prima facie, it appears that the District Magistrate, West Champaran after the recommendation of the CEC dated 23.10.2003 granted mining lease in the safety zone area on 12.6.2004 and consciously permitted the same even after his attention was drawn to the illegality. The officials of the State of Bihar filed an affidavit of compliance on 22.9.2005 before the Supreme Court on the issue of safety zone. Thereafter they ignored their own undertaking and permitted mining in the safety zone and virtually challenged the very idea or requirement of the safety zone in the present proceedings. The report of the MOEF dated 7.7.2006 speaks eloquently.

Let a copy of the same be forwarded along with the present orders to the CEC, New Delhi for appropriate consideration and enforcement as also the issue of violation of its orders accepted by the Supreme Court.

AKS/ **(Navin Sinha, J.)**

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